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Public Law: Discharge In Bankruptcy

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means of transportation without discrimination against legitimate forms of transportation" and fostering of "sound economic conditions among all classes of carriers."[106] To accomplish an objective clearly within such legislative intent, the commission could have formulated rules of practice in advance which would encompass the complaint of a private carrier, but even in the absence of such a rule of practice formulated in advance, the commission was recognized as having power to proceed on an *ad hoc* basis.[107]

The *Louisiana Tank Truck Carriers* case would seem to dispose of a problem thought to be posed by a decision of the First Circuit last term which, in effect, directed an electric cooperative, exempt from commission regulation, to nonetheless look for relief to the commission against alleged invasion of territory by a regulated utility.[108] The same commission authority relied upon to enable it to entertain the complaint of an unregulated private carrier would seem to permit entertainment of the complaint of an unregulated electric cooperative.

DISCHARGE IN BANKRUPTCY

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The question whether a particular claim has been discharged in bankruptcy is generally one for the state courts. Adjudication of an individual bankrupt is treated as an application for a discharge,[1] and the discharge will be granted unless the bankruptcy court is satisfied that the bankrupt has obtained a previous discharge within six years or has been guilty of conduct condemned by Section 14c of the Bankruptcy Act.[2] Section 17[3] provides that certain types of debt are not affected by a dis-

106. *Id.* at 17.
107. *Ibid.*
108. Pointe Coupee Electric Membership Corp. v. Central Louisiana Electric Co., 140 So. 2d 683 (La. App. 1st Cir. 1962).

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1. Bankruptcy Act § 14a, 11 U.S.C. § 32a (1958). A corporate bankrupt, however, must still make application.
2. 11 U.S.C. § 32c (1958). The six-year provision, § 14c(4), is the only ground for denial of a discharge not based on culpable conduct of the bankrupt. Obtaining money or property by means of a materially false statement in writing respecting one's financial condition is a ground, § 14c(3), but since 1960 this has applied only to persons "engaged in business."
3. 11 U.S.C. § 35 (1958).

charge. Ordinarily, however, the bankruptcy court will not consider the dischargeability of particular debts,[4] and the creditor must assert his claim after bankruptcy if he believes it to be preserved by Section 17.

In such a post-bankruptcy action, the debtor will plead his discharge in bankruptcy. The burden is then on the creditor to establish that his claim is within one of the excepted classes. The provision most commonly used for this purpose is found in Section 17a(2):

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, . . . except such as . . . (2) are liabilities for obtaining money or property by false pretenses or false representations,[5] or for obtaining money or property on credit, or obtaining the extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive. . . ."

Several claims assertedly within this language have been brought to the Louisiana appellate courts in the past year. According to the leading Louisiana case of *DeLatour v. Lala*,[6] the plaintiff must show: "(1) That defendant made false representations; (2) that these representations were made with the intention of defrauding the plaintiff, and (3) that the plaintiff relied upon and was misled by the false representations." Three recent cases[7] where the proof was held to meet these requirements need no comment. In three other cases where an inaccurate financial statement was submitted to a loan company, it was held that reliance on the statement had not been proved.

In *Excel Finance Baronne, Inc. v. Abadie*,[8] the defendant who was indebted to numerous loan companies had been borrowing from companies affiliated with plaintiff for about ten years and from plaintiff itself for two or three years. These facts made

4. For analysis of the rule and of three exceptions to it, see 1 COLLIER, BANKRUPTCY 1699 (14th ed. 1956).

5. The rest of the quoted language was added in 1960, 74 STAT. 408 (1960). Effects of the amendment are discussed in Comment, 21 LA. L. REV. 638 (1961).

6. 15 La. App. 276, 131 So. 211, 212 (Orl. Cir. 1930).

7. Peoples Discount Co. of Shreveport v. Jones, 152 So. 2d 656 (La. App. 2d Cir. 1963); Liberal Finance Gentilly, Inc. v. Brister, 152 So. 2d 331 (La. App. 1st Cir. 1963); Cash Finance Service No. 3 Inc. v. Rhoden, 145 So. 2d 79 (La. App. 4th Cir. 1962).

8. 152 So. 2d 822 (La. App. 4th Cir. 1963).

investigation easy and were considered to preclude reliance on an application that listed no debts.

Excel Finance Baronne, Inc. v. Dobbs[9] involved an application for renewal of a loan which listed some but not all of applicant's other debts. Defendant testified that plaintiff's manager led him to believe that he need not file a complete list. The court, referring to "an increasing number of cases of this same pattern" where loan companies had induced borrowers to provide a basis for post-bankruptcy enforcement of claims, accepted the testimony as true and added that in any event the loan company could not have relied on a financial statement which "obviously failed to reflect the borrower's total indebtedness at the time."

Perdido Finance Co. v. Shephard[10] affirmed judgments for the defendants where plaintiff had made inquiry at the Exchange of Consumer Finance Companies and at the Credit Bureau before granting the loan, and had relied on the information obtained from these sources rather than on the borrowers' financial statement.

Denial of recovery in the circumstances of these three cases seems correct.

In *C H F Finance Co. v. Corca*,[11] the lender had required a co-maker, and defendant urged that there was thus no reliance on the financial statement. The evidence, however, showed a *partial* reliance on the statement, which was held sufficient to save the debt from discharge. Of the few cases considering the point, most have reached this result.[12]

If a dischargeable claim goes to judgment before a debtor gets his discharge, he may still prevent the judgment from being enforced. Two recent cases provide illustrations. In *Blue Bonnet Creamery, Inc. v. Simon*,[13] a creditor who had got a default judgment for a debt allegedly based, in part, on the debtor's fraud, petitioned after debtor's discharge for garnishment of the debtor's wages and obtained judgment against the garnishee. The debtor brought a rule to show cause why the garnishment should

9. 146 So. 2d 202 (La. App. 4th Cir. 1962).
10. 144 So. 2d 117 (La. App. 4th Cir. 1962). *Perdido Finance Co. v. Campbell* is the same case.
11. 152 So. 2d 830 (La. App. 4th Cir. 1963).
12. See Comment, 21 LA. L. REV. 638, 644 (1961).
13. 243 La. 683, 146 So. 2d 162 (1962).

not be annulled on the ground of his discharge in bankruptcy, and the creditor claimed that its judgment was within Section 17a(2), hence was not discharged. The Supreme Court believing that the court of appeal had insufficient evidence in the record to make its findings, remanded to the trial court for further proof on the issue of fraud. In *League Central Credit Union v. Warman*,[14] where judgment was obtained a few days before defendant got his discharge in bankruptcy (no stay having been applied for in the bankruptcy court), defendant sought to enjoin enforcement of the judgment, and it was held that a preliminary injunction would issue as the order of discharge made out at least a prima facie case.

INTERNATIONAL LAW

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The amount of international activity in Louisiana is not reflected in litigation before the Louisiana courts. Fortunately so. It may be presumed that many international differences and disputes are settled amicably on the advice of counsel for both sides and in accordance with international law, or else they are directed into diplomatic channels for settlement at the governmental level. Accordingly, the case of *Republic of Cuba v. Mayan Lines, S.A.*[1] is one of the infrequent instances of such judicial determination in Louisiana.

In a prior suit by the Mayan Lines against the Republic of Cuba, with attachment of Cuban property in Louisiana, the plea of sovereign immunity had been withdrawn and a judgment was rendered in accordance with a settlement agreement reached by the parties. The present action was instituted by the Republic of Cuba, through a duly authorized local attorney, seeking to annul the money judgment of the prior suit by reason of alleged error, fraud, and ill practice. The lower court dismissed this action on the grounds of lack of procedural capacity because after the break in diplomatic relations between the United States and Cuba the Republic of Cuba had designated the Gov-

14. 143 So. 2d 241 (La. App. 4th Cir. 1962).

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1. 145 So. 2d 679 (La. App. 4th Cir. 1962).